

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ADAN JOE NIETO,
Petitioner,
v.
ELDON VAIL,
Respondent

Case No. C09-5250 RBL/KLS

**REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
*IN FORMA PAUPERIS***

Noted for: June 5, 2009

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Coyote Ridge Corrections Center in Connell, Washington. He filed an application to proceed *in forma pauperis* (Dkt. # 3), but has paid the \$5.00 filing fee. Accordingly, the Court should deny the application.

DISCUSSION

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed in forma pauperis. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

On May 1, 2009, the Clerk received Petitioner's application to proceed *in forma pauperis*. Dkt. 3. On May 11, 2009, Petitioner paid the \$5.00 filing fee. Because he has paid the filing fee, Petitioner's application to proceed *in forma pauperis* is moot.

CONCLUSION

Because Petitioner has paid the filing fee, the undersigned recommends that the Court deny his application to proceed *in forma pauperis*.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), Petitioner shall have ten (10) days from service of this Report and Recommendation to file written objections thereto. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set this matter for consideration on **June 5, 2009**, as noted in the caption.

DATED this 19th day of May, 2009.


Karen L. Strombom
United States Magistrate Judge